

**MILTON TOWN COUNCIL MEETING**  
**Milton Theatre, 110 Union Street**  
**Monday, October 1, 2007**  
**7:00 PM**

**Public Hearing** – Mayor Posted called to order this part of the meeting at 7:00 PM

**Proposed change to Town Code – Chapter 5 Section 26 (Building, Housing, Existing Building and Unsafe Abatement Codes).**

John Brady A brief summary of the proposed ordinance is as follows: It is updating the current ordinance to reflect it as the base codes for building and zoning issues. The 2006 edition of International Residential Code, 2006 edition of the International Property Maintenance Code, 2006 edition of the International Building Code, 2006 edition of the International Existing Building Code as issued by the International Code Council and the future amendments. It moves Sussex County Council from this section of the Chapter because Sussex County has now adopted the International Code as their base code. That's a synopsis of the ordinance that's been proposed.

Mayor Post: Since there is no public comment, we will close this public hearing at 7:03 PM and will now open the Public Participation.

**Public Participation**

Tina Thoroughgood representing Cat Snippers, I want to thank the Town and Council for their generous budget money. We'll be able to do 25 more cats. There is a spay/neuter clinic Oct 25, unfortunately there are so many cats on the waiting list that is already filled, so next time I will try to announce at Town Meeting of upcoming clinics so people can get their own animals in because if people pay for their own animals to be spayed, the less we have to pay for. We could use volunteers desperately. The four active Cat Snipping people all work, so we have to take off work to transport these cats. If you would like to help I have some brochures here and there will be some at the Town Hall. We could also use towels, used is fine. We have to give a towel to every cat that is spayed or neutered.

Katheryn Greig, 326 Union Street representing the Milton Garden Club. I would like to thank you for continuing to support us and starting tomorrow you'll see some of the benefits of your contribution because we're going to be changing the Summer flowers to the Fall flowers. If anyone wants to come out and plant we'd be glad to have you. Also, this is a reminder about the Community Greening Award that we're going to be receiving Sunday, Nov. 11. If anyone from the community wants to go and be a part of that you need to let me know by Oct 20. It is in Philadelphia. We're going to accept the award, take part in the reception and then go out to dinner. To help also to pay for the mums Wed Oct 17 we're going to Irish Eyes. We'll be set up outside. Irish Eyes is going to give us 10% of all their food proceeds for that day from 11AM to 10PM. We'll have a 50/50 raffle and door prizes and hope to see you there.

Bob Carbone – I'm here representing the Milton Lions Club. I'd like to enlist your support for two upcoming fundraiser events coming up. We're holding our annual Roadhouse Fundraiser on Monday, Oct 22. The Roadhouse will give us 10% of all meals that day. We're also holding a raffle. The raffle will consist of what we call the taste of Milton. Two prizes will be awarded. One prize will be a gift certificate for the Milton Pizzeria and Iguana Grill. And the other prize is a gift certificate Irish Eyes and the Milton House. The winners will be drawn on Oct 27 at our annual smorgasbord.

Our second fundraiser is going to be held on Oct. 27 from 3:00PM to 7:30 PM at H. O. Brittingham Elementary School. It's our annual smorgasbord. It consists of crab imperial, turkey salad and tons of desserts. Adults are \$13, children under 12 \$5. Tickets can be purchased from any Milton Lions Club member or at the door. We ask for your support so that the Lions Club can provide financial support and assistance to worthwhile town projects in addition to those we support on a national level. Some of those are eye screening for children, the Milton express train, and we loan out medical equipment. We support the fire dept. We also provide financial assistance to adults who cannot afford eye exams or glasses. We provide leadership awards to local children and provide scholarship aide for college. We support the Milton Historical Society, the Ader projects and build wheelchair ramps. We support the little league and Blue/Gold game just to name several. We are open to new membership. We hope to see you at one or both of the events.

Jim Welu, 30231 East Mill Run I was dismayed when I saw the trees being cut behind Holly House. So I stopped by to talk to Donna Johnson who is the listing agent to see what she knew. She thought that it might be that the owners may have looked at the new tree ordinance. She gave me a copy and I read it. I couldn't make heads or tails of it. It seemed very confusing. She pulled it off the website. There weren't any dates on it, so I don't know how old it was. Last week I attended Councilwoman Hudson's committee meeting on Health & Environment and received a copy of the tree ordinance for Rehoboth Beach. From attending that meeting and some of the conversations, I'm not sure where you're going with the tree ordinance tonight; I think that looks like a good basis to start. A tree ordinance crosses so many boarders in this Town, between P&Z and Economic Development, Historic District and all of that that somehow all the committees ought to be somehow be involved in reviewing it and commenting on it. It would be very helpful if the agenda items, shown here tonight, are made available other than on the website, maybe in a notebook at Town Hall or in the library.

Mayor Post: The tree ordinance on the website is a very rough draft. There will be workshops on the tree ordinance with the Council. The Rehoboth Tree Ordinance has a lot of problems. It requires a full time arborist and some other staff. Our Solicitor will address this later on in the agenda.

Robert Fogle, 405 Union Street – I'd like to thank the Mayor, Councilwoman Betts and the Chief of Police for the swell job they've done in taking care of the vacant vehicles next to my property. I'm not sure of what the ordinance is for cigarette butts being thrown from one property over the street, landing in my property. If there is such an

ordinance, if someone could please advise me of that, I would be greatly appreciative for that. I picked up the article in the Cape Gazette that stated we are the laughing stock of Milton. We always hear the bad things. People are reluctant to say what they are appreciative to and the good things that our Mayor and Vice Mayor. Keep up the good work.

John Brady: With we regard to the cigarette butts, this is a violation of Chapter 14, Section 10, of the Town of Milton Ordinance to deposit rubbish on somebody else's property. This can be enforced by either the police or code enforcement officer.

C Hudson: Bob, I'd like to go on record saying I did not call in a complaint about you working on your home without a building permit. Bob, I have nothing to do with Streets and Sidewalks. I have nothing to do with the crack in your sidewalk. I have put a can out in front of the house so Lynn can put her cigarette butts in the can. I would like to say that both our mothers have been friends for quite sometime. I've invited you and your mother to my house, we've exchanged presents and I have never done you any harm.

Ginny Weeks – Thank you for all you do I certainly appreciate it. I appreciate what the Garden Club and Cat Snipers does. It's what makes Milton. I love the idea of the camaraderie that a lot of people here feel. I find it unfortunate that one of you doesn't feel that way and considers our Town a laughing stock. I was horrified. There have been a series of letters in the Cape Gazette that have not been nice. I was horrified that somebody who is here to help build the Town up would write a letter like that. I was very concerned and also miffed when it was more important to you to ride with your family in the 200<sup>th</sup> Anniversary than to attempt to show a sense of unity with the Council. God knows that since you didn't get elected Mayor and Mr. Collier didn't get elected to the Town Council two years ago; this Town has been under a state of siege. It's got to stop.

Mayor Post closed the Public Participation at 7:25PM.

Mayor Post opened the Milton Town Council Meeting on Monday, Oct 1, 2007 at 7:25PM

**A Moment of Silence** was called by Councilwoman Betts.

The **Pledge of Allegiance** was said by all in attendance.

**Roll Call:**

Present: C Martin-Brown, Here; C Duby, Here; C Hudson, Here; C Prettyman, Here; C Abraham, Here; C Betts, Here; Mayor Post, Here

**Additions or corrections to the agenda** – no changes.

**Approval of Agenda** C Prettyman motioned to approve the agenda, C Duby second. Mayor Post we have a motion and second, all in favor, motion carried.

### **Presentation of Minutes**

August 6, 2007, August 21, 2007 and September 4, 2007

C Prettyman motion to to accept all three dates as presented. C Martin Brown second, Mayor Post we have motion and a second, all in favor, motion carried.

### **Committee Reports**

Milton Development – C Betts, Milton Development netted over \$700 on Not Yet Famous. We have performance of Dracula on October 12, 13, 14, 19, 20, 21, 26, 27 & 28 at 7PM. Advance tickets are \$15, seniors & students are \$12. Tickets at the door are \$18 and seniors are \$15. To make reservations call the Milton Theatre at 684-3400. Our current Executive Director is stepping down and Ches Warner will be taking over.

Streets & Sidewalks – C Betts, letters have gone out to all the property owners with regard to sidewalks and curbing to see how many people might be interested in partnering with the Town of Milton to see if we can get a lower estimate. They need to get back to the Town this week and then we will go out for the estimate if we have a large number so that it pays the Town to go out and get the estimate. I have inquired about grants. Senator Adams said he would talk to Representative Carey and maybe they could help us with some of the money. At the present time he did not know of any grants, but I'll continue to look.

Sewer & Water – C Abraham, we met on Sept 12 in reference to water & sewer usages which were handled. Our next meeting is on October 30 6PM at the Library in reference to a couple bill discrepancies and plan on discussing the steps to take in handling a complaint.

C Prettyman on October 27 Love at First Bite there's going to be prizes at 104 Union Street.

Parks & Recreation - C Duby, this committee met on Sept 19 in the park. The committee reviewed the proposed renovations to the park. This includes are new gazebo, new playground equipment and new grills. The committed discussed the plans the recommended that the Town move forward to put these projects out to bid and get the renovation work underway. The committee also recommends that the Town work to get as much State and Federal grant money as possible to either offset or supplement the \$100 thousand allotted in the budget. The committee also recommended that private donations be sought and encouraged. The Town has already been contacted by a couple of organizations indicating that they would be willing to help fund this. It was also recommended that after the renovations that a plaque be erected in the park recognizing all of those private donors. The committee also expressed it's gratitude to the 200<sup>th</sup>

Anniversary Committee for it's donation of the funds that were left after the celebration. Those funds are specifically going to be used to build the new gazebo. Also discussed were lighting, irrigation, tree memorials, flagpoles and benches. The full minutes have been submitted to the Town and will be up on the website.

Health & Environment – C Hudson, this committee met on Sept 25, 6 PM, Milton Library. Our discussion included the benefits of trees to the health & environment of the Town. Milton has a unique wooded and coastal environment with trees being an essential part. The presents of trees improves air quality, conserves energy, reduces soil erosion, and enhances storm water detention and drainage. An ordinance is desirable to protect, preserve and enhance the wooded charter and natural resources of the Town. We just looked at the Rehoboth Tree ordinance briefly. There were four things that the RB tree ordinance did. It regulated the protection, planting, removal and long-term management of trees within the city; required a survey of existing trees and a plan for tree preservation prior to development, redevelopment or subdivision of a lot; established the system of permits to ensure density, trunk maintenance, protection and removal of trees on public and private property and established remedies and penalties for violations of its provisions. The next meeting will be Tuesday, Oct.23, 6PM at the Milton Library. Henry Poole from the DE Dept of Agriculture will be the guest speaker with a presentation on the health benefits of trees. You're all invited.

Emergency Preparedness – C Hudson, this committee met on Sept 18, 6PM, Milton Library. Mike McNamara told the group that he and Corporal Rockwell have begun to drive around Town to determine where to place the 24 Neighborhood Watch signs which have been delivered and ready to be put up. We also spent some time discussing the need and expense of posts for some of the signs and a good number of the Watch members are ready to donate their time to install the signs and the posts. Grant money will be used to provide everyone in the group with hats and vests for visibility and identification and possibly for the purchase of inexpensive cell phones for use to call 911 during emergencies. The group anticipates having training in the near future to operate as an effective Neighborhood Watch. We will schedule specific dates for that. The group also looked at and discussed maps of the Town and they showed a lack of accuracy and details. Streets without names. At the next Town Council Meeting, which is now, I would ask the Town Manager, George Dickerson, if it was possible if someone could be assigned to produce maps that have all of Milton Streets identified. These maps need to be available for fire, police and general public. Bill Wright, a member of the Milton Fire Company, also requests that all house numbers be consistently placed on the homes and all street signs reflective for high visibility during emergencies. I'd like to give a special thanks to Chief Phillips and Corporal Rockwell for organizing our CERT training. We had approximately 25 people who participated on Friday, Sept 28, and Saturday, Sept 29, at Milton Elementary School. Meetings will continue to be held every third Tuesday, 6PM, Milton Library. The next meeting will be October 23. There is a form that will be available through the Neighborhood Watch for people who are handicapped. You can fill out this form and send it in to 911. That way if you call you'll already be pre-registered. They'll know what you're handicap is and they can help you with your problem.

200<sup>th</sup> Anniversary – C Betts, again we'd like to thank everyone that participated, it was a wonderful day. We will be burying the capsule on October 13 at 11AM behind the museum. It may be another expense to the Town if our employees cannot provide the cement work that is needed to be done.

### **Town Manager Report**

I'd like to thank everyone for their cards, flowers, fruit baskets, etc. sent after my recent gallbladder surgery. The number of persons who responded to my health issue was overwhelming so I thank you very much. Today, MT trash, who was awarded the trash bid at the last Council Meeting, actually started with those services. If there are any issues please call Town Hall. We will try to identify and direct you to someone that you contact so we can resolve these issues. The new provider does want to work with us and made every effort in word at this point to facilitate all those requests. There has been a dedication plaque, which I was instructed to order, for the new Town Hall. It has been ordered and once it comes in it will be placed on the concrete steps. The quarterly billing will be going out to Town residents very soon with regard to water & trash. Sewer will be provided by Tidewater in that billing. As those new bills come out, at least for this first round, there will be people at Tidewater and Town staff available at Town Hall so we can try and resolve any problems. Kathy Shields from Tidewater is here tonight.

Kathy Shields, Mgr. Customer Service, Tidewater Utilities – We will be responsible for the billing. Once the Town has sent out their bills they will be sending us consumption information and at that point we'll be generating the bills. The rates haven't change. The only difference is you will be receiving two separate bills, one from Tidewater for the waste water and then the Town for their water consumption. It's probably going to take two weeks after the Town's bills for you to receive a waste water bill because we want to review all the bills and make sure the consumptions are correct. The week after that, we're anticipating the week of October 22, we'll have a representative at Town Hall to answer any questions probably Tuesday, Wednesday and Thursday between 10 & 2. We'll be leaving fliers at the Town Hall with contact information, emergency numbers, etc. C Prettyman requested after hour or Saturday appointments be made available for those who work. He will work with George Dickerson to accommodate those requests. C Hudson - would someone from Tidewater be able to tell us when they're going to start building a new sewer plant. Kathy Shields – I have Bruce Patrick, Vice President of Engineering, with me tonight. Bruce Patrick, Tidewater – we're tried to make some improvements at the existing plant. We've done a fair amount of cleaning up, replaced several pumps at the plant and existing pumping stations. Our goal is two-fold. The new plan is actually developed or driven so to speak. There's a fair amount of development proposed. Once we get the development lined up, right now the economy is down as far as the building and development, so one kind of hinges on the other. Once the land is properly transferred and all. Our goal would be as soon as possible. We have about 180,000 gallons of hydraulic capacity which can take us good while. Jack Frey, Wagoman's West Shore – Some people at Wagoman's only have one water meter and they're using irrigation. It's unfair for them to be charged with using that gallon measurement. I talked with George Dickerson, Town Manger, about it. He said he was

going to have it corrected. I would like to see the people that are in Wagonman's with one meter get something to tell them just how much water they're really using. Kathy Shields – We'll look into that. C Duby – Could I have an explanation of what you're talking about because I don't understand? Jack Frey – You're being overcharged for the sewer. Out at Wagonman's most of us have two meters. One meter is what's going to your house and one meter is what's going in your yard. The people with one meter, everything is going through that meter. The waste water is being charged for whatever you use in irrigation. Sometimes I'm using 30,000 gallons a quarter. That's being charged by your waste water bill. It shouldn't be. Kathy Shields – on this issue I'd don't have any answers at this point. It was one of my questions. Where we provide water we have large accounts that use irrigation. This is something we are looking in to. I just don't have an answer to that right now Mayor Post – but it would require a second meter? Kathy Shields – right C Duby – maybe in one of the billings a piece of information could be provided by Tidewater that explains this to people so they know what the options are and how the waste water is charged. Kathy Shields – we could do it as a bill insert Jack Frey – with regard to the two meters, when I was on the Council a few people from Wagonman's had asked me about that I was told by someone in the Town Hall that they only needed one meter. We were going to take care of it. I think the Town sends Tidewater the amount of water they're using through the meter. Kathy Shields – yes they provide us with the consumption. Jack Frey – I was under the impression that the Town was going to take care what the people were using in the irrigation systems. C Duby – do you base the waste water processing charge on the consumption of water? Kathy Shields – there is a gallon charge and a quarterly charge. That hasn't changed. It is \$40/quarter +\$3 per 1000 gallons. C Martin-Brown – if we find a lot of residents need a second meter and the Town is responsible for putting those in we might take the same approach that we have with the sidewalks where we have a collective number of people and we contract to have second meters put in all at the same time and get a greatly reduced rate as a possible solution. Ed Roscis, Wagonman's West Shores – at the time we were buying our house we were told that the Town was taking care of the second meter and that the issued had already been addressed. However, we are entering the period where no one irrigates which could be a good rule of thumb for figuring how much irrigation we use. The other side is I didn't get the option to put the second meter in so I agree with C Martin-Brown we'd all benefit. Tom Kelley, Cannery Village – I was a Building Manager. The only way you can do it is you have to have two meters. You read the main meter then use the second meter for the irrigation. It's cut and dry.

## **Written Reports**

### Maintenance Report

C Prettyman, I make a motion to accept the Maintenance Report as presented. C Hudson I second. Mayor Post: We have a motion and a second, all in favor, motion carried.

### Code Enforcer Report

C Prettyman, I make a motion to accept the Code Enforcer Report as presented. C Betts I second. Mayor Post we have a motion and second, all in favor, motion carried.

### Police Report

C Prettyman, the monthly report September 2007, I make a motion we accept it as presented. C Abraham I second. Mayor Post we have a motion and second, all in favor, motion carried.

### **Old Business**

### **Recommendation of bid for construction of Milton Rails to Trails Project**

Michael Lane, Becker Morgan Group – I would like to re-familiarize you with the Milton Rail to Train project. It spans between Federal Street and Chestnut Street on the south side of town. It's about 800 ft long. The drawings show about a 10 ft wide pathway replacing the old railroad tracks that are there. The railroad tracks will be removed by a separate DELDOT contractor. The plans also show landscaping, lighting, benches, some pavers, grading, and drainage. That is all to be done before the spring. The bids that were reviewed came in. There were 7 bids. They were from Sam's Construction, Mike Davidson Excavating, JJID, A.P. Croll & Son, Ken Construction, American Paving and Paul's Paving. Most of the contractors had all the bid forms required except that only one of the contractors had the required Federal disadvantage business enterprise form. But, luckily this contractor that had the form was the low bidder. The low bid was almost 2-1/2 to 3 times lower than a professional cost estimator estimated. It was a very good bid. With the base bid of \$179,750 the Town will be getting basically all the grading, pathway, connections to existing sidewalks at Chestnut Street & Federal Street will be connecting at each end. And, with the base bid we broke the bid forms down so that we had alternates. There were 9 alternates that we would add to the base bid. These add alternates consisted of landscaping, site lighting, steel bollards, benches, trash receptacles, brick pavers, concrete, and some direct buried posts. If you add all the add alternates up it comes \$294,000, but we're recommending that you not take all of the add alternates. Delete some of them, because they won't be needed. So our recommendation is to award the contract to Mike Davidson Excavating and then the Town needs to discuss some of the alternates that will fit into their budget. We recommend 8 and 9 add alternates not to be used and then you might want to think about some others. With those alternates it gives you the whole project that you were looking for. DELDOT needs to review these bid documents for accuracy. What will happen is the Town will send a recommendation letter to DELDOT and then they'll have about 1-2 months before they will review the bids and send a letter of notice to proceed to the contractor. So we're going to send a letter of recommendation to the Town and then waiting for DELDOT to approve of everything. Stephanie Coulbourne: I have one clarification. All these alternates, getting everything we need and not going the cheaper route of the pressure treated wood and of the concrete is all coming below the funding that we have received from the Federal Government. Is there a possibility of taking any money that is remaining and moving that towards phase II? Mike Lane – Yes to your funding question. I do not know the answer to transferring the money. C Martin-Brown: I do have a follow about redeploying the funds not used on Phase I to Phase II. If that's a Federal grant there needs to be an official notification request that that be reprogrammed in the next federal budget year. If that's 08 funds a letter of intent needs to in to request to redeploy



into 09 needs go forward under Federal Regulations. Mike Lane – Ok if that’s what needs to be done. My understanding from DELDOT is that they’d like for you to hold as much money as possible until the end of the project just to be sure. Stephanie Parker – I haven’t seen plans so I’m not sure how much lighting and benches you all are planning and I don’t know how many people have been on a rail to trails site, but the ones I’ve been on in PA and VA they are moving areas. They’re not parks. They’re places for people to walk, run, ride bikes, to roller blade, to move. Not to go and sit down. Mike Lane It’s the same thing. The two uses can occur on the same plot of land. There is a 10 ft wide walkway that you can roller blade and walk and then there are benches along the side. There are three benches and eight light poles. The light poles would be illuminating about as much light or somewhat less than your streetlights. Mayor Post – so what we need is a motion of recommendation to recommend Mike Davidson Excavation for Phase I of rails to trails. C Hudson I make that motion. C Betts I second. Mayor Post we have a motion and a second, all in favor, motion carried.

### **Proposed change to Town Code – Chapter 5, Section 5-26- Final Reading**

John Brady: An ordinance to amend Chapter 5, Section 5-26 of the Town of Milton Code. Amend section Chapter 5, Section 5-26 Building, Housing, Existing Building and Unsafe Building Abatement Code. By deleting the current wording in this section and replacing thereto as follows (read ordinance into record). This is a reading of the proposed ordinance after its first reading and Public Hearing now before Council for their consideration. C Prettyman I make a motion that we accept the ordinance amendment for Chapter 5, Section 5-26, of the Town of Milton Code. C Martin-Brown Second. Roll call: C Martin-Brown, Yes; C Duby, Yes; C Hudson, Yes; C Prettyman, Yes; C Betts, Yes; C Abraham, Yes; and Mayor Post, Yes

### **New Business**

### **Proposed Tree Ordinance Discussion**

John Brady – The Town’s been working on the new proposed Town Charter. My review of the current Town Charter and what had been a proposed draft of an ordinance that it was placed on the Town website just for consideration as a preliminary draft would indicate that final version could not be adopted until after the Town Charter changes were adopted. This is because under the current Town Charter the Town only has the power to regulate trees that are adjacent to the streets in the Town or are on public property and does not have the power to regulate as I read the Town Charter. Trees that are located in back yards or on privately owned lands that are not adjacent to the roadway. The tree ordinance is probably the second most controversial type of a property ordinance that you can have. As was mentioned in the Public comments tonight people when they hear about regulating the trees on the property they believe unfortunately that big brother’s going to come in and say what color is the shingles and things like that. Gave a history on the Rehoboth ordinance. I, as the Town Solicitor, want to make sure that the public has every opportunity to commend on what a proposed tree ordinance should cover. It is my suggestion to the Mayor and to the Council members that drafts of tree ordinances be

circulated, that a public hearing be held. After the public hearing a workshop session be held so the public comments can come in, the Town Council members can talk freely about what's been proposed and then to have a first reading of a tree ordinance and hold any enactment of a tree ordinance until after the Charter proposed changes are adopted. The proposed Charter change says very clearly in that section of the Charter that the Town has the power to regulate trees on any property within the Town both public and private. So without having that language in there it would be inappropriate in my legal opinion to proceed with a tree ordinance now because it could not be enforced in back yards or on side rows but could only be enforced on either public property or along the front lines of roadways.

[Council members had a brief discussion stating some of their opinions regarding the Proposed Tree Ordinance.]

### **Request for a partition of 2-35-20.08-89.00 (304 Atlantic Street)**

Mayor Post – it's my understanding that Cabe Associates has made recommendation to Council that this should be sent back through P&Z because of being a subdivision. Scott Hoffman – the review of the plan was done by Mr. Kerr and the applicants submitted plan does not meet the requirements for a partitioning based on the definition of partitioning in the code. He stated that it should be considered as a major subdivision. Larry Pfeifer, 1201 Savannah Rd. I represent the applicant Catherine Phoebe Sachs the partition application pending before you this evening. I would respectfully contradict that opinion because to adopt that reading of the partitioning ordinance would be to seek to invalidate dozens of partitioning which have taken place all across the Town of Milton over the past years. There are numerous blots which have partitioned both of which do not necessarily front on an existing roadway. It seems to me the plain reading of the ordinance itself says any subdivision containing not more than two lots fronting on the existing street not involving any street or road or extension of Town facilities and not adversely affecting the development or remainder of the parcel or adjoining property. I submit to you that the plain reading of that language indicates that the property should front on an existing street. It's clear that the property itself which is sought to be partitioned clearly fronts on an existing roadway, Atlantic Street. Beyond that I can certainly expound on that if you wish for me to, but I felt that I should at least get that out of the way before presenting the plot and layout. Scott Hoffman – I'd just like to read into the record a portion of Mr. Kerr's memo which specifically is taken from the code (read the memo). Larry Pfeifer – They're both being accessed from the same roadway, Atlantic Street. With Council's permission may I now introduce Jessica Nichols of Karen's and Associates who has prepared the drawings that we would seek to present to the Council this evening. Jessica Nichols, Engineer, Karen's & Assoc – I'm here tonight on behalf of the applicant, Mrs. Sachs, of this property. The application before you tonight is for one parcel of land being partitioned into two lots. Under the Code, which I don't have in front of me, and upon meeting with the Town we were advised that the procedure for partitioning is an application made to the Council. There is no requirement to go in front of the Planning Commission. Nonetheless, please let me familiarize you with what we're proposing. The parcel located at 304 Atlantic Street is 1.11 acres. It's zoned R2. In R2

you allowed to do both detached and attached single family homes. We're proposing two detached single family homes. The allowable density in R2 is 4.35 units per acre. The proposal is for 1.8 units per acre. The minimum lot size in this zoning is 4,000 square ft. The minimum lot size that we are proposing is 14,085 square ft. Lot 1 runs along the front of Atlantic Street, and is 80 ft in depth and approx 175' wide. Lot 2 makes up the remainder of the site and is 32,260 square ft. As Mr. Pfeifer said access to both of these lots is via an existing cross-access easement on the adjacent lots to the west. This access was approved by DELDOT in a letter of no-objection which you have before you dated July 30, 2007. Water service is to be provided by the Town of Milton and sewer by Tidewater Environmental Services. There are wetlands located on this lot. There is a wetlands line that delineated by a certified wetlands scientist. There are approximately ½ acre of wetlands located on the site. There's also a flood plane on the site which is shown in light gray on this plan and there is a flood way on the site that is shown in dark gray. The lots were laid out so that there would be as best utilization of the uplands on this site and that you could feasibly fit two single family detached homes on the site. We chose this specific lot layout to be able to fit two homes on the site out of the flood way since you are not allowed to build in the flood way. You are allowed to building the flood plane which is the light gray area. When the owners of these specific lots go to get their building permit they go through a rigorous series of applications to show that their homes are not within the flood way and that they're minimum horizontal floor member is at no elevation higher than what has been established on the flood map. We had several discussions and several applications to DELDOT for the letter of no-objection and it was at their suggestion that we utilize the existing easement to minimize the number of accesses to Atlantic Street in this residential area. Larry Pfeifer – do you have an alternate drawing clearly delineating the flood way? Could you show that to the Council and point out how the building locations have been configured so as not to interfere with that flood plane? Jessica Nichols – this is just an example house layout to illustrate the ability to locate two single family homes on these lots out of the flood way. What is shown here a 12' drive going through the existing 20' easement and it shows access for two homes. These are the largest homes that could be put on the site; one with a footprint of 60 x 50 and one with a footprint of approximately 40 x 65. Scott Hoffman – I have a quick question. Reading the subdivision code it specifically states that both lots have to front on an existing State, County or Town street. Can you show the Council that's the case in this particular project? Larry Pfeifer: In response to your question, that is not what the ordinance says. It says fronting on an existing street. It does not necessarily state that both lots which are ultimately subdivided have to be located on a single street. If that we the case there are numerous lots in the Town of Milton which have been partitioned over the years. As recently as the two lots right across the street that do not both ultimately front on Atlantic Street, or an existing street. With all due respect to your and Mr. Kerr's concerns I submit that it is up to the Town Council to decided on how it construes the wording and meaning of it's ordinances and not the Engineers. Scott Hoffman – I want to introduce one additional item for the record. That is the preliminary plan that was submitted when this parcel was rezoned. It shows a new roadway to be constructed for the subdivision. C Duby – Can I ask a question about the easement? Who owns the property that the easement is on? Larry Pfeifer – my client, Ms Sach. It's a previously recorded easement. Jessica Nichols – with the limited amount of wetlands and with

DELDOT not wanting to have two accesses immediately adjacent to each other on that road they like to encourage shared entrances wherever possible. Larry Pfeifer – obviously the idea is to have as little environmental impact as possible. That was the major concern in all of these plans. John Brady - members of Town Council here is the law that applies when you consider the matter tonight. If you are interpreting Chapter 17 of the Town code of the Town of Milton. 17.5 defines partitioning as follows: (Mr. Brady read Chapter 17.5 and 17.28 of the code). Definition of a major subdivision is found in 17.5 is as subdivisions not classified as partitioning or minor subdivisions. That is the law that you must follow as you deliberate on the matter in front of you now. C Duby: The way I understand the disagreement between these two gentlemen is that Mr. Pfeifer is reading that phrase fronting on an existing street, whether that applies to the two lots or the piece that contains the two. Larry Pfeifer: Correct. I'm saying that the verb fronting modifies the word subdivision. All my client is asking that the Council construe the language of the ordinance the way that it has in years past, other applications that have been made just like this.

[All in attendance had an open discussion about previous lots that were subdivided in this same manner.]

Larry Pfeifer: Additionally if any members of Council continue to have difficulties in coalescing these two readings that seem to be at odds, I would suggest that this situation perhaps would be covered by Section 17-34 of the Town ordinances were in the case of a proposed subdivision it can be shown that strict compliance with the requirements of the chapter result in extraordinary hardship to the subdivider because of unusual topography or other conditions which are not self-imposed. The Council may vary, modify or waive requirements to do substantial justice. I would suggest that this is one of those situations. Mayor Post: In summarizing is the fact that you've addressed half of your parcel several years ago where that's how it was structured where you would have three lots on the right side with easement being your access for the future. Now you've come a few years later and asking for the same on the other half of the parcel but instead of three lots you're asking for two lots which the back lot again would have the access to the easement. You're just asking to make your project whole for something you had gotten approval from several years ago. Larry Pfeifer: Based on all our submissions, I would respectfully request the Council favorably consider my client's application and approve the partition. Subject, of course, to whatever conditions may be rightfully imposed by the Council. C Abraham: I'd like to make a motion to approve the partition of 2-35.20.08-89.00 which is 304 Atlantic Street with the mentioned deed restrictions. C Prettyman: I second. John Brady: For the record the mentioned deed restrictions should be cited at the time. C Abraham I think you're talking about the deed restrictions under 17-18 which would be the partition. Access for this parcel will not be on Atlantic Street but will across easement as referenced in the DELDOT letter of no-objection dated July 30, 2007 and made a material part of the motion by this reading. C Abraham: With recommendations as stated by Mr. Brady in reference to lot 1 shall have access from the existing 20' wide egress easement on the land of Sax property and lot 1 will not be permitted direct access to State/County Road 88 as per recommendations in the DELDOT letter July 30, 2007. Mayor Post: We have a motion and a second, any more discussion. C Duby: Mr.

Hoffman can you give us any enlightenment as to Mr. Kerr's concerns? Scott Hoffman: One concern would be that if you had any parcel with some frontage you could then subdivide it and have an entrance to all of those parcels via an easement rather than going through the subdivision process. C Martin-Brown Mr. Brady would there be a solution if the motion was amended for the Council to vote in support of this motion with reservation? Your legal nuances would be appreciated if you could amend the motion to make it for two lots as an exception or as a restricted application. John Brady: The crux of the issue is as follows: Partition is limited for two lots from one into two. Minor subdivision is three. There was an intention of a previous Town Council when then adopted this ordinance that three or less not go to P&Z, come directly here to Town Council. Four or greater is a major subdivision that must go P&Z before it goes to Town Council. Everybody who has looked at the code is in agreement on three issues. The issue that's before you right now is the first issue is your determination of frontage. If you have found by the motion that frontage means, as the Town Engineer is saying, there is still a way you can approve the project as was asked by the applicant going under 17-34 saying that unusual circumstances hereby exist that were not the cause of the applicant because of the topography, the way lands were laid out, or the best reason possible is DELDOT won't let approve any other way. We are not spiting the applicant who is coming forward trying to get the best use for their land and we're using the wiggle room presented under 17-34 under unusual circumstances to pass something that cannot be automatic approval for anybody else whoever comes down the pike in a similar situation. Roll call vote: C Martin-Brown, Yes; C Duby, Yes; C Hudson, No, I'm in favor of listening to the experts we hire; C Prettyman, Yes; C Abraham, Yes; C Betts, Yes; and Mayor Post, Yes. Motion carried.

### **Street closing request for Tobin Drive**

C Betts Charles Court II homeowners' association on Tobin Drive would like to sponsor a fall block party for the residents of Tobin Drive on October 20 from 1-5PM. We would like to have permission to close Tobin Drive during this time. A rain date of October 21 will be used. No alcoholic beverages will be served as the tone of the party will be a family gathering where neighbors and meet and a sense of community can be fostered. It is our intention in order to maintain a continued sense of community to hold annual spring, summer and fall block parties on Tobin Drive here in Milton. These intentions sprung from the requests of neighbors that have enjoyed our annual summer block parties for the past three years. The residents of Tobin Drive feel that it is not only important to create positive relations with your neighbors but foster and maintain those relations throughout the year. These budding relationships provide an open communication line to the community of Milton as a whole as well as insure the safety and security of our neighborhood. Knowing your neighbors makes it easy to notice someone that doesn't belong. It knowing that our goals and intentions bare well with those this Council has for the Town of Milton we want to thank you in advance for this opportunity to continue positive community relations here in Milton on Tobin Drive. If you have any questions please contact Tom Arkinson. C Betts I would like to make a motion to accept this in order for them to hold three annual block parties a year, spring, summer and fall. C Prettyman I second. John Brady If you're going to do a blanket approval you should

have a start date because you know the date of their first block party. And, you should list the dates that you know and the other dates cleared by the Chief of Police. C Betts Could we make this a motion to accept it with the indication if what month the three block parties will be by month? Specifically, October, 20; and in the future for the spring and the fall with notification from the police. C Prettyman: I second. Mayor Post: We have a motion and second, any discussion? C Betts Chief do you want them to notify you of the specific date the beginning of the month with a copy to the Town Manager? Chief Phillips: Yes. C Betts: An amendment to that is to notify the Police Department and the Town of Milton the actual dates of the block closing with a copy going to the Town Manager and Streets committee. C Prettyman I second. Mayor Post We have a motion and second, any discussion with the amendment, all in favor, motion carried. C Betts Could the Town Manager type a letter of approval for me? George Dickerson: Yes

### **Committee Appointments**

Mayor Post as every knows at the last meeting we had split the Historic District Commission and the Board of Adjustments. So for Historic District Commission would be Brenda Burns placed at a three year term; Jack Vessels two year term; Richard Gregg, two year term; Mike Lostinado one year term; Glenn Phoner one year term. At the same time I'd like to present for the Board of Adjustments Sally Harkins to fulfill Brenda Burns term and Amy Kratz to fulfill Jack Vessels term. It's my understand that Alexander Dunn is to be appointed to the Zoning Ordinance Revision and Review Committee and at the same time for Economic Development Clara Preston be placed on that committee and Joanie Martin-Brown to be placed as the Council representative and chair on that committee. And, the Land Acquisition Chairperson will be Deana Duby. C Abraham I motion to accept. C Prettyman I'll second. Mayor Post we have a motion and a second, any discussion

C Duby I have a question, I don't believe the Council has approved my appointment as chair of the Parks and Recreation Commission? So it might be good to do that at the same time we do this. Mayor Post: I thought automatically those committees that you're fulfilling, I'll be glad though at the same time to make an amendment to those committees for Deana Duby to be the chair of Parks and Recreation. Do we have a motion to my amendment? C Abraham: Motion to accept with the amendment. C Prettyman: Second. Mayor Post: All in favor, motion carried

John Brady: The Attorney General's office has indicated for Town's that have executive sessions they like it when they're available to be recorded as well as the handwritten notes. In light of that my recommendation to Town Council is going to be to stay up here let the recording system work and to have everybody else leave the building during the executive session. This is designed to make better records of what happens in the executive session. Mayor Post: Do we have a motion to go in to Executive Session? C Duby: So moved. C Prettyman: Second. Mayor Post: All in favor, motion carried

The Public Participation of the meeting was ended at 9:24 PM

## **Adjournment**

C Betts: I make a motion to adjourn. C Prettyman: I second. Mayor Post: We have a motion and a second to adjourn at 9:56 PM, all in favor, motion carried.

Respectfully submitted,

Stephanie Coulbourne